



**Minutes of the State Board of Health
November 4, 2009**

Holiday Inn Hotel Seattle-SeaTac International Airport
17338 International Boulevard, Seattle, WA 98188

SBOH members present:

Keith Higman, MPH, Chair
The Honorable John Austin, PhD
Maxine Hayes, MD
Frankie T. Manning, MN, RN

Patricia Ortiz, MD
Mel Tonasket
Karen VanDusen
Diana T. Yu, MD, MSPH

SBOH members absent:

The Honorable Donna Wright

State Board of Health Staff present:

Craig McLaughlin, Executive Director
Desiree Robinson, Executive Assistant
Heather Boe, Communications Consultant

Ned Therien, Health Policy Analyst
Tara Wolff, Health Policy Analyst

Guests and Other Participants:

Charleen Adams, Department of Health
Anna Alston, Planned Parenthood
Michelle Davis, Department of Health
Dennis Dennis, Department of Health
Jessica Dolle, Department of Health
David Gifford, Department of Health
Mike Glass, Department of Health
Maryanne Guichard, Department of Health
Cassandra Jackson, Sound Mental Health

Lain Knowles, Department of Health
John Peppert, Department of Health
Tracy Sandifer, Department of Health
Mary Saffold, Region 5 AIDSNET
Rita Schmidt, Department of Health
Erik Smith, Your Healthcare Today
Tami Thompson, Department of Health
Robert Wood, MD, AIDSNETS, Public
Health—Seattle & King County

Keith Higman, SBOH Chair, called the public meeting to order at 9:34 a.m. and read from a prepared statement (on file).

1. APPROVAL OF AGENDA

Motion: Approve November 4, 2009 agenda

Motion/Second: Yu/VanDusen. Approved unanimously

2. ADOPTION OF OCTOBER 14, 2009 MEETING MINUTES

Motion: Approve the October 14, 2009 minutes

Motion/Second: Manning/Ortiz. Approved unanimously

3. SELECTION OF VICE CHAIR

Postponed until January.

4. SBOH ANNOUNCEMENTS AND OTHER BOARD BUSINESS

Craig McLaughlin, SBOH Executive Director, reported that the state budget shortfall would reach \$1.7 billion or more. Early election results indicate Initiative 1033, which would worsen the public health funding crisis, is failing. Referendum 71 appears to be passing. The Governor's Office, he said, is considering applicants for the consumer position. He pointed out several items in the November FYI. He noted a letter from the Mercury Awareness Team that asks the Board to hold a public hearing regarding national vaccination schedule recommendations. The request prevents the Board from adopting the 2009 recommendations by reference through an expedited process. He noted other materials related to the government reorganization proposals of Governor's Natural Resources Subcabinet.

Karen VanDusen, SBOH Member, asked whether there was a timeline regarding review of WAC 246-203-130, Keeping of animals. Mr. McLaughlin responded that there is no time limit for completing rule making after filing a CR-101, but that staff recommends waiting until the Governor's Natural Resources Subcabinet completes its review of the broader issue of agency responsibilities. Chair Higman commended staff and Environmental Health Committee members on the letter to the Natural Resources Subcabinet. He asked Mr. McLaughlin whether the Office of Financial Management (OFM) had provided direction in anticipation of additional budget cuts and how cuts might affect the Board. Mr. McLaughlin said the last reduction was a 2% cut in personnel costs. This would not be enough to make much of a dent in the budget shortfall. He said that OFM is compiling a list of "mandatory functions" of government. The Board is on the list because it is a constitutional activity.

5. DEPARTMENT OF HEALTH UPDATE

Maxine Hayes, State Health Officer & SBOH Member, noted that since the Board last met, the President issued a declaration of national emergency about H1N1 influenza. It has most to do with waiver of certain regulatory requirements for health care facilities. She reported that vaccine manufacturers are having difficulty producing the H1N1 vaccine rapidly. The Department is encouraging high-risk groups to seek out vaccine availability in their communities. Diana Yu, SBOH Member, said Thurston County is now advising the general public sufficient vaccine for everybody will likely not be available until January or February. She said she is emphasizing hand washing and other personal protective actions. Dr. Hayes reported that seasonal flu vaccine is also in short supply, but recommended people continue to seek vaccination into February. She said the incidence of influenza in Washington, which has been highest in the eastern part, is now declining, but cautioned against complacency because an upswing could occur. Chair Higman said that in Island County they are relying on community providers to administer vaccines, which has worked for some high-risk individuals but not others. His local health department has been receiving calls from the public asking for help getting vaccinated. The department is trying to respond; however, because of staff cuts due to budget shortfalls, they are not able to quickly ramp up to provide service, even with federal money. Dr. Hayes said legislators seem to be aware of the problems caused by cuts to the public health system. She said the problem of lack of manufacturing capacity to produce flu vaccines was caused by the public not greatly demanding flu vaccines in the past. She said other major emergency response planning concerns of the Department are the potential flooding from the weakened Howard Hanson Dam and the potential impact of lots of people coming for the 2010 Olympic Games in Vancouver, BC.

6. BOARD MEMBER COMMENTS AND CONCERNS

Member VanDusen noted that the latest Journal from the University of Washington School of Public Health has several articles on health impact assessments. John Austin, SBOH Member, commented on showing leadership about covering sneezes appropriately. He expressed concern about the frequent shortages in vaccines and suggested the Board address this in some way. Dr. Hayes commented that the Board has written letters in the past advocating federal consideration of measures such as federalizing production of vaccines, similar to what Canada has done. Frankie T. Manning, SBOH Member, asked why the nation has not moved on that. She said that in the 1980s there was advanced planning done for what might be federalized during a time of war. She would like to see a similar planning effort for public health emergencies. Dr. Hayes commented that establishing the Strategic National Stockpile was a move in that direction.

Mel Tonasket, SBOH Member, prompted a conversation among Board members about how to communicate complete information to the public about what to do regarding flu-like symptoms and flu prevention. Mr. McLaughlin commented that federalizing vaccine production was seriously looked at under the Clinton administration. He remembered that the Board wrote letters about this issue several times in the past. He said he remembered one that provided a continuum of recommendations. He asked if the Board wished to give any direction to staff regarding developing a letter about federalizing vaccine production or other public health emergency policies. Dr. Yu recommended that a letter include a recommendation for alternative, newer, vaccine production technologies. Member VanDusen asked whether the letter would advocate federalizing all vaccine production or just emergency supplies. Member Manning said that many alternatives should be explored, but she would support federalizing production of all vaccines needed for prevention. Member Austin said he would support advocating long-term planning for vaccine availability, whether by federalizing production or other means, such as contracting in advance. Member Manning recalled that vaccines were free when she was young. She encouraged vaccine policies that assured better protection of entire communities.

The Board took a break at 11:09 a.m. and reconvened at 11:20 a.m.

7. CHAPTER 246-215 WAC, RECOMMENDATION TO OPEN RULE MAKING ON FOOD SERVICE

Member VanDusen explained that in 2004 the Board approved a major revision of the food service rules. The revisions were developed through an extensive stakeholder process. As a result, the Board adopted the 2001 Food and Drug Administration (FDA) Food Code by reference, with some modifications. According to RCW 43.20.145 the Board should consider the most recent version of the FDA Food Code when adopting rules and the FDA will soon publish a 2009 version. Over the past five years, other issues have arisen with the rules that deserve review and might warrant revisions. She said that although no formal action is asked for today, the Board may wish to give direction to staff to open the rule for possible revision. She introduced Dave Gifford, Food Program Manager for DOH, and Ned Therien, SBOH Staff. Mr. Therien pointed out the items in the Board packet. (See materials behind Tab 7.) Mr. Gifford gave a presentation on the history of the Board's food service rules and the evolution of the FDA Food Code; reasons to make changes in the state rules; and the proposed process and timeline.

Dr. Ortiz asked how often the FDA updated the Food Code. Mr. Gifford said it is revised every four years with supplements every two years. Dr. Hayes asked for a description of some of the issues the proposed rule changes would address. Mr. Gifford said an example of a contemporary food

issue was a new definition for potentially hazardous foods. He also discussed possibly clarifying provisions for establishments that provide food service to children. Dr. Yu commented on the need to address differences in Department of Early Learning and DOH rules regarding drinking water in child care centers, cultural food handling practices (such as proper use of rice cookers), and exotic food types. Member Manning asked if the rule covered adult family homes and residential care facilities. Mr. Gifford said it did but noted that they are not regulated by local health. Chair Higman asked if this rule revision would result in a new “working document” or “blue book” meshing the state rules with the FDA Food Code. Mr. Gifford said that DOH may propose rule language that puts the Food Code language directly into the state rules, rather than continuing the “working document,” so the state food code can be cited better by local health jurisdictions. Chair Higman said he would be interested to learn later if there are any local health jurisdiction concerns about this proposed change. Member VanDusen said she had not heard of any opposition to opening the food service rules for revision.

Motion: *The Board directs staff to file a CR-101 to update chapter 246-215 WAC.*

Motion/Second: *VanDusen/Yu Approved unanimously*

8. CHAPTER 246-272A, BRIEFING ON ON-SITE RULES

Member VanDusen explained that the Board has responsibility under RCW 43.20.050 to adopt rules to prevent and control health hazards related to the design, construction, installation, operation, and maintenance of on-site sewage systems designed to handle less than 3,500 gallons per day of wastewater. The last major revision of these rules was adopted in July 2005 as chapter 246-272A WAC. The rules include a provision that DOH review chapter 246-272A WAC every four years to evaluate its effectiveness. As part of its recent review, DOH surveyed local health jurisdictions, worked with its Technical Advisory Committee, and received input from the On-site Wastewater Treatment System Advisory Committee coordinated by the Department of Licensing. Mr. Therien pointed out documents behind Tab 8 for this briefing. Maryanne Guichard, Director of the Office of Shellfish and Water Protection of DOH, explained the results of the DOH review. Ms. Guichard said DOH feels the rules are effective and is not recommending revisions at this time other than the drainfield remediation rulemaking already begun. She said that some clarification of provisions could be warranted in the future and her staff was developing a list of such topics. She said that DOH is working on better messaging about the flexibility that local health jurisdictions have in addressing the operation and maintenance provisions in the rules. Funding to local health programs would help them implement the operation and maintenance requirements.

Member Austin asked which county did not have problems with funding for their operations and maintenance program. Ms. Guichard said Kitsap County has a stable funding system for their operations and maintenance program through a utility tax. Chair Higman asked about public concern regarding frequency of inspections of alternative on-site systems. Ms. Guichard gave Henderson Inlet as an example of an area with good public support for inspections. She explained that every three years homeowners bring in a report from a professional, but do inspections themselves other years. This is supported by Thurston County providing septic system training to homeowners. It is a day-long course, expensive to offer, but very popular. Dr. Yu said the Thurston County program has been well received by the public because they have an outdoor facility demonstrating various types of systems. Chair Higman asked Ms. Guichard to clarify that local variations in operation and maintenance programs are consistent with the Board rule, which she did. Chair Higman noted that the DOH recommendation that chapter 246-272A not be opened for major revisions at this time is consistent with the Environmental Health Committee's

recommendations. He asked DOH to come back in four years with another report on the effectiveness of the rules.

The Board recessed for lunch at 12:18 p.m. and reconvened at 1:16 p.m.

9. PUBLIC TESTIMONY

None.

10. CHAPTER 246-100 WAC, HEARING ON HIV COUNSELING AND TESTING RULE

Dr. Ortiz explained that this item would require Board action. She complemented John Peppert, Department of Health, on the excellent stakeholder work. She explained the need to bring Washington rules into synch with Centers for Disease Control (CDC) guidelines. Tara Wolff, Board Staff, explained that the Board has filed a rule proposal September that would affect four sections (WAC 246-100-072, -207, -208, and -209). She described the attachments behind Tab 10, and called the Board's attention to four proposed small language changes to the filed rule proposal. Mr. Peppert summarized the proposed rule revisions and briefly described the process the Department used to engage stakeholders in rule making. For more detail, please see his presentation under Tab 10.

Member Tonasket asked Mr. Peppert to comment on a letter from the American Civil Liberties Union (ACLU) about the proposal. The ACLU would like the specific "opt-in" consent for testing requirement, which encourages counseling, in the existing rule to be continued for HIV testing. Mr. Peppert said the proposed rule would require health care providers to specifically inform persons before testing for HIV and provide an opportunity for them to ask questions and decline the test, but it would not require the provider to give pre-test counseling. The proposed changes would also provide alternatives for post-test counseling by local health jurisdictions or the provider. Member VanDusen asked whether local health jurisdictions could do this work despite budget cuts. Mr. Peppert explained that partner services are required by state law and will still be provided. Dr. Yu said she expected local health jurisdictions would want to provide post-test counseling to HIV positive people. Dr. Ortiz recommended reversing the order of wording in a phrase in WAC 246-100-208(1)(b) to read "verbally or in writing...". Dr. Yu asked how providers would be notified of the rule changes. Mr. Peppert said that he would ask professional associations to help get the information out. Dr. Hayes said she is pleased with the proposal. She assured the other Board members there were ways to educate the providers about a rule change such as Continuing Medical Education (CME). Member VanDusen referred to comments in a letter from Group Health Cooperative and asked Mr. Peppert to clarify them. Mr. Peppert said WAC 246-100-036 would continue to make anonymous HIV testing reasonably available.

Public Testimony

Dr. Robert Wood, Director of Seattle-King County HIV-AIDS Control Program and Chair of the Washington State AIDSNet Council, said his program would refer positive test cases to care. He noted that although he would be retiring soon, he hoped the AIDSNet Council, or a similar organization, would be maintained. He said one of his biggest concerns is late diagnosis of HIV because it makes care more difficult and results in greater potential for transmission. Concerns about confidentiality must be balanced against the benefits of testing, he said. He supported the proposed rule changes, especially simplifying testing procedures and eliminating the existing provision making the health provider the gatekeeper for access to the person tested. Dr. Hayes complemented Dr. Wood on his many years of service and leadership on HIV/AIDS issues.

***Motion:** The Board adopts the revisions to WAC 246-100 as published in WSR 09-19-144, along with the amendments proposed in the document titled “Three Language Amendments for OTS 2646” and the wording order change recommended by Member Ortiz this day.*

***Motion/Second:** Yu/Austin. Approved unanimously*

11. NEWBORN SCREENING PROGRAM BRIEFING

Dr. Yu reminded the Board that just over a year ago, the Board added 15 new conditions to the panel for newborn screening. She then introduced Mike Glass, Department of Health. Mr. Glass explained to the Board that the full annual report was available to them either electronically or in hard copy. He presented the history of Board actions concerning newborn screening and a summary of a years’ worth of data on newborn screening for genetic disorders that were the subject of a Board rule revision a year ago. His presentation also included information on what is on the horizon. Mr. Glass’s presentation and other documents summarizing the data are included behind Tab 11 of the Board’s packet. Dr. Yu commented on the laboratory’s capacity and the number of children who needed to be referred further. Mr. Glass thought the referral numbers would go down somewhat due to refinement of laboratory technology. He felt that the laboratory’s capacity was adequate to address the addition of these new conditions. Member Manning asked what information is being received from military doctors. Mr. Glass said that the state is getting referrals from the military and that the folks at Madigan might be interested in working more closely with the newborn screening program in the future. Dr. Yu wondered if people with false positives were surveyed about the impact on them. Mr. Glass said that would be interesting but that it was not being done currently. Chair Higman asked what the benefits are to the children who have a condition that is picked up by screening. Mr. Glass responded that early detection and treatment could prevent lifetime disabilities.

12. BRIEFING ON PUBLIC HEALTH ACCREDITATION BOARD AND DEPARTMENT BETA TESTING

Mr. McLaughlin explained that national voluntary public health accreditation seems to be gaining support through recognition by Congress and federal agencies. He introduced Rita Schmidt, DOH Performance Management Coordinator, who gave a presentation on the history of public health accreditation efforts that resulted in the founding of the Public Health Accreditation Board (PHAB) in 2007. It has signed agreements with national organizations representing public health officials. The Washington State Association of Local Public Health Officials (WSALPHO) has agreed to compare this accreditation model with the Public Health Improvement Plan (PHIP) system used in Washington. She said about 80% of the PHAB standards are equivalent to PHIP standards. The other 20% will be optional measures during the next local public health review cycle. The Department of Health is a beta test site for the PHAB program. A copy of Ms. Schmidt’s presentation is included behind Tab 12.

In response to a question from Member Manning, Ms. Schmidt said that she is not sure what the cost of the accreditation process will be for local agencies. Member Manning expressed concern about the cost to governmental public health agencies to apply for accreditation and said it would be an additional burden. She asked how many agencies were participating in beta testing. Ms. Schmidt said about 40 agencies nationally are participating. Chair Higman said he is concerned about the burden for small public health agencies, especially if being accredited is required to be eligible for federal funding. Member VanDusen asked whether the Legislature is on board with this approach. Dr. Hayes said the current political climate includes an expectation for agencies to meet measurable standards. She noted that the quality of local health departments is not determined by size. Member

Manning said her concern about impact to small public health agencies is that a fixed cost for accreditation has a much larger impact in the budget of a small agency. Dr. Yu commented that she thinks standards reviews make a difference, but take a lot of staff resources. She thinks the PHIP review system is good, but is concerned that the move to a new accreditation requirement would leave some of the small PHIP partners out. Member Tonasket agreed that costs associated with accreditation could be significant. He asked what funding agency the accreditation would be tied to. Mr. McLaughlin said it is not tied to any current funding source; however, bills before Congress suggest it could be tied to future federal funding. He said he does not know the potential impact to state boards of health. The Board might need to meet a standard on behalf of DOH. He said a big difference between the PHIP standards and the PHAB standards is that the PHIP standards are “stretch” standards, while the PHAB ones are pass/fail. The train has left the station, he said, and it is important to harmonize the systems. Dr. Yu said she would like to see a “one-for-all and “all-for-one” system. Member Manning suggested that Washington agencies share best practice ideas and resist the competitive atmosphere accreditation could cause. Chair Higman told Ms. Schmidt that she should not take any concerns she heard from Board members as criticism of her work.

13. 2010 BOARD MEETING SCHEDULE (taken out of order)

Mr. McLaughlin explained the staff proposal for the 2010 Board meeting schedule. See materials behind Tab 13. He said that the proposal is limited to six scheduled meetings because of staff capacity and budget constraints. Two other tentative dates are reserved in case additional meetings are needed. He said the locations are not indicated for the last half of the year because of the uncertainty of next year’s budget. He recommended that locations of meetings for the last half of 2010 be determined after the supplemental budget is approved. Dr. Yu offered to host one of the meetings in Thurston County at the Thurston County Health Department offices.

***Motion:** The Board approves the 2010 Proposed Board/ Council Meeting Schedule considered this day, with possible future amendments as necessary.*

***Motion/Second:** Tonasket/ Manning. Approved unanimously*

The Board took a break at 3:08 p.m. and reconvened at 3:18 p.m.

14. STRATEGIC PLANNING

Chair Higman introduced this agenda item by stating that he thinks the draft strategic plan reflects Board member comments at the October meeting and is ready for Board consideration. Mr. McLaughlin pointed out documents behind Tab 14, including “State Board of Health Criteria Used in Selecting Priority Policy Development Projects in 2001.” Mr. McLaughlin described a few of the plan proposals. He mentioned that one of those is encouraging inclusion of tribal public health in overall public health planning discussions. He said the American Indian Health Commission is developing an initiative along this line and he recommends the Board do what it can to help in the effort. He noted that the Commission is not the voice of all tribal health agencies and does not directly represent tribal governments. Dr. Yu commented that her agency has recently had great partnership with three tribes on shellfish and H1N1 issues. She said, however, that there are strong ties with the federal government, which also must be taken into consideration. Member Tonasket commented that tribes are trying to develop more partnerships on public health issues. He said one of those issues is medical electronic records. Mr. McLaughlin recommended listening to what tribes want in the way of partnerships, rather than proposing our own ideas. Member VanDusen asked whether Mr. McLaughlin had evaluated the proposed initiatives with the Board’s priority policy list. He said that they fit for him, but noted they were not listed in order of priority in his memo.

Motion: *The Board adopts the 2009 Five-Year Strategic Plan presented this day.*

Motion/Second: *Tonasket/Yu. Approved unanimously*

15. LEGISLATIVE PREVIEW AND REVIEW OF BOARD POLICY STATEMENT ON LEGISLATIVE ISSUES (taken out of order)

Mr. McLaughlin, SBOH staff, explained that two factors would drive much of the legislative activity this session—a state budget shortfall and health care reform at the national level. He commented on some of the issues in federal bills on health reform. He said the outcome would affect how Washington might offer a basic health plan and structure Medicaid. How this will turn out is uncertain and we do not know when Congress will finalize its plan. That could happen before, during, or after Washington’s legislative session but will likely affect the kind of bills considered by the Legislature in 2010. Other issues the Legislature is likely to consider include reduction of boards and commissions; services in tribal communities; possible new taxes on tobacco and soft drinks; and changing the personal exemption for school vaccinations. He predicted that there will be few budget enhancements and that some big programs like the Basic Health Plan could be eliminated.

Mr. McLaughlin said that he expects the 2010 Legislature to consider various governmental reform initiatives. Chair Higman asked when the Governor’s Natural Resources Subcabinet would be likely to decide on a proposal. Mr. McLaughlin said he is unsure, but extensive reorganization would be expensive and changes would be limited in the short-term by the budget shortfall.

Mr. McLaughlin asked Board members to provide feedback on the draft “Statement of Policy on Possible 2010 Legislative Issues.” The Board briefly discussed the stance it might take on various public health issues impacted by budget shortfalls, such as cuts in tobacco prevention programs or to the Basic Health Plan. Member VanDusen said that she would want to protect prevention programs. Dr. Yu said she would want to protect public health funding, especially sustainable funding. Mr. McLaughlin asked for general comments from members in the next few weeks about the draft strategic plan. He said the Governor would release a draft budget in mid-December that could be important in determining additional Board member comments. He asked the members to send him additional specific comments after that, but well before the January Board meeting. He said he would use the comments to develop a final version for Board consideration at its January meeting.

ADJOURNMENT

Chair Higman adjourned the meeting at 4:04 p.m.

WASHINGTON STATE BOARD OF HEALTH

Keith Higman, Chair